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ABSTRACT

In 1984, the U. S. Environmental Protection Agency (EPA) estimated that friable asbestos-containing materials were present in 31,000 school buildings throughout the country. Once inhaled, asbestos fibers may remain in the lungs indefinitely and can lead to various diseases. This handbook is intended to provide administrators--in nontechnical terms--a solid body of facts and some suggested courses of action to deal with asbestos health hazards in their schools. The various chapters cover asbestos health hazards, key legislation and litigation, a summary of federal and state laws that may offer protections for educational employees, and some potential strategies for the National Educational Association and state and local affiliates. (MLF)

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# ASBESTOS IN OUR SCHOOLS

## Taming the Silent Killer

EA 018 175

A Workbook for Association Leaders Produced by NEA

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# Introduction

This handbook shouldn't be necessary.

For at least ten years, health experts, government officials, the media—all have known that crumbling asbestos that releases loose fibers into the air can make people sick—even lead to death. Last year, the Environmental Protection Agency (EPA) estimated that asbestos hazards were present in more than 31,000 school buildings affecting 1.4 million school employees and 15 million students.

Nearly every day, there's a story in the local paper about another building that's loaded with asbestos health hazards. Some of these hazards get immediate attention, the danger quickly removed. Regrettably, too many get a little ink and a lot of lip service. Those are the situations which this handbook addresses.

It's taken nearly a year of work, drawing on countless sources, to compile this information. The various chapters cover asbestos health hazards, key legislation and litigation, a summary of federal and state laws which may offer protections for educational employees, and some potential strategies for local and state Associations. No handbook of this size, of course, could ever address a subject so complex as asbestos health hazards, and no one strategy will work in every situation. Remember too, that this is not a one-shot effort, but a continuing responsibility.

What we hope this handbook will do is give you—in non-technical terms—a solid body of facts and some suggested courses of action to deal with asbestos health hazards in your own school.

Together NEA and state and local affiliates can make a difference in ridding our schools of this most serious health threat. For our sake, and for the children, we must try.

Mary Hatwood Futrell
*NEA President*

*Chapter* 1

# What You Should Know About Asbestos Health Hazards

## The Key Word Is 'Friable'

From the mid-forties to the early 1970s, thousands of school buildings were constructed or renovated using asbestos-containing materials. Builders considered these materials top-notch for their fireproofing and electrical, thermal and acoustical insulating properties. In recent years, however, experts have identified these materials as posing serious health hazards for millions of students and school staff.

It's true that not all asbestos-containing materials are hazardous. Asbestos generally poses no health hazard, for example, when it's tightly compacted such as in vinyl floor tiles. However, even asbestos-containing materials of this type may release fibers if disturbed or altered during building renovation or repair, or if damaged during ordinary building use. The majority of exposure problems occur when asbestos-containing materials become flaky, or "friable," meaning they can be easily crumbled, pulverized, or reduced to powder by hand pressure. Friable asbestos-containing materials may release deadly asbestos into the air as a result of damage, deterioration, or building vibration.

The rate at which asbestos fibers enter the air depends on the way they're released. Fiber release from deteriorating materials is continuous but at a low level; whereas fiber release from damaged materials is likely to be at a high level for a relatively brief period.

Asbestos fibers are so tiny that they can remain airborne for an extended period of time and can float from one area

of the building to another. Even after settling, the fibers may once again become airborne when someone walks near them or from ordinary dusting and sweeping. Asbestos fibers may be part of white dust that comes from asbestos-containing materials, but quite often they can't be seen and can only be detected by using an electron microscope.

## Health Risks: Danger in the Air

Once inhaled, asbestos fibers may remain in the lungs indefinitely and can lead to various diseases, including asbestosis, lung cancer, and mesothelioma.

*Asbestosis:* Asbestosis (or pulmonary fibrosis) is a non-malignant, irreversible disease that produces scarring of the lungs. Symptoms include shortnesss of breath, fatigue, basal lung noises, coughing, clubbing of the fingers, and cyanosis (deficient oxygenation of the blood producing a bluish coloration of the skin and mucous membranes). Victims become increasingly debilitated and ultimately may die. Although asbestosis generally is found in persons who mine or mill asbestos, manufacture asbestos-containing products, or work on construction projects where asbestos is used regularly, medical research suggests that it also may develop from long-term exposure to asbestos in buildings or other facilities.

*Lung cancer:* The risk of developing lung cancer appears to increase significantly as a result of exposure to asbestos. That's especially true for cigarette smokers. Although the risk appears to increase in proportion to the duration and level of exposure, there's no known exposure level that's considered safe. Asbestos-related lung cancer usually strikes its victims long (15 to 35 years) after the initial exposure, making detection of the disease quite difficult.

*Mesothelioma:* This is a diffuse, irreversible cancer that spreads over the surface of the lungs (pleural mesothelioma) or the stomach lining (peritoneal mesothelioma). It is virtually always caused by exposure to asbestos. What is more, the level of exposure necessary to produce mesothelioma

appears to be low; the exposure need not even occur at the workplace. Like lung cancer, it takes many years to develop (20-40 years), and this long latency period makes medical detection difficult. Although reported cases of mesothelioma are still relatively rare, the combination of its long latency period and the fact that it may develop from short-term exposure has led a number of researchers to expect a dramatic increase in its incidence during the next few decades.

Inhalation of asbestos fibers also has been linked to cancer of the larynx, oral cavity, esophagus, kidney and gastrointestinal tract.

## The Scope of the Problem: 31,000 Schools, 15 Million Students, 1.4 Million School Staff

In 1984, the U.S. Environmental Protection Agency (EPA) estimated that friable asbestos-containing materials were present in 31,000 school buildings throughout the country. According to the EPA, this widespread presence of asbestos—which may even be a conservative estimate—means that 15 million students and nearly 1.4 million school employees are being exposed to these hazardous materials.

Builders generally used asbestos-containing materials to fireproof, soundproof, and insulate school buildings. They were applied in four different forms. Sometimes the materials were *sprayed* onto ceilings, walls or structural members. In this form, they appear soft, fairly fluffy, and vary in color from white to dark gray. Over time they may harden and become crusty, and therefore may be easily crumbled or crushed, thereby releasing asbestos fibers. Sprayed-on asbestos-containing materials generally are found in boiler rooms, storerooms, auditoriums, cafeterias, music rooms, swimming pool areas, janitor sinks and closets, and fan and machinery rooms.

Asbestos-containing *acoustic plaster* was troweled onto surfaces in order to promote soundproofing. Like sprayed-on asbestos, this plaster becomes hazardous when it is crumbled

or crushed. It is found most often in corridors, cafeterias, offices, auditoriums, music rooms, and sound control and projection rooms.

*Asbestos wrapping materials* and *asbestos cement* also may release asbestos fibers. The former are used to insulate pipes, boilers, hot water reservoirs, pressure tanks and ducts. Often these materials are enclosed in a canvas, steel, or plastic jacket. When the jacket is cut or otherwise opened, the asbestos is exposed and fibers may be released into the air.

Asbestos cement may be found on walls, ceilings and storm drainage pipes. Often it is placed behind perforated panels—called "transite panels"—that are located in auditoriums, lobbies, and music rooms. Although asbestos cement is firmly bound, it breaks upon impact and thereafter may release asbestos fibers.

Since friable asbestos-containing materials may be damaged by only slight contact, it's likely that they will release asbestos fibers at some point in time as a consequence of normal day-to-day activity. For example, asbestos fibers may be released as a result of a ball hitting a gymnasium wall or ceiling; hanging a picture; ordinary custodial activity; deterioration of the asbestos-containing material—or its separation from the underlying surface—due to water damage from plumbing or roof leaks; building vibration caused by sources inside or outside the structure; and scraping or gouging due to vandalism.

The presence of asbestos health hazards in the schools is particularly serious since children who are exposed to asbestos are more likely to develop cancer than are adults similarly exposed. Because they tend to be more active than adults, children inhale and exhale more often; and since their breathing often is through their mouths, they miss the body's normal nasal filtering system. Therefore, children are particularly likely to inhale greater amounts of asbestos fibers.

Children's higher rates of metabolism and cell development also may increase their risk of developing an asbestos-

related disease. Furthermore, since children have a greater remaining life span than adults, they are more likely to develop such diseases during their lifetimes. The net effect of these facts spells real tragedy: since most asbestos-related diseases take 15 to 40 years to manifest themselves, childhood exposure to asbestos may result in an adult being stricken in the prime of life.

## Testing for Asbestos: Some Do's and Don'ts

Even though friable material may be present in a school building, that material might contain no asbestos. Furthermore, even if it does contain asbestos, a layman cannot determine whether it is releasing asbestos fibers into the air. School districts were required under federal law to inspect their schools for the presence of friable materials and have any such materials analyzed to determine their asbestos content. Sometimes the proper procedures were followed and sometimes they were not. If an educational employee suspects that his/her school contains asbestos, inquire if tests were performed and ask to see the results. If not, urge that scientific testing be conducted to determine whether a hazard exists.

*Bulk sampling:* This method will determine if asbestos actually is present in the school. At least three small samples of each suspect material must be removed and taken to a qualified laboratory for analysis. Be aware that a single room or area may contain several different types of friable material; it is necessary to take three samples of each type.

NEA can recommend laboratories that have participated in EPA's quality assurance program for bulk sample analysis. It is advisable to use one of these laboratories, since there are many incompetent firms attempting to pass themselves off as experts. At minimum, the laboratory that is selected to test the samples should specifically identify the source (location in the building) of each sample, the method of analysis used (i.e., polarized light microscopy, or x-ray diffraction in

certain cases), the type and percentage of both asbestos and non-asbestos components, and the method of qualification used.

The samples should be collected by trained experts, not educational employees. If educational employees are ordered to do so and feel they must comply, for their protection they should demand to be furnished with full-face respirators. Paper masks are insufficient protection from asbestos fibers.

*Air measurements:* If bulk sampling indicates that asbestos is present, the inspectors may recommend that air tests be administered to measure the quantity of asbestos actually in the atmosphere. However, the value of these tests, in most circumstances, is limited since they cannot indicate when asbestos fibers will contaminate the atmosphere in the future.

At best, air measurements provide information only on *current* asbestos contamination at the times when the tests are administered. They provide no information on the *potential* for *future* fiber release and cannot predict *future* air levels. Thus, air measurements are not good indicators of whether activities should be undertaken to prevent future asbestos contamination. Indeed, if a school contains friable asbestos, fibers may be released at any time.

Air tests do have some utility, however. They can indicate the existence of an imminent asbestos health hazard and, correspondingly, the need for evacuation of the area and immediate implementation of corrective procedures—ordinarily called "abatement procedures." In addition, as will be explained below, they should be utilized during and after the performance of abatement procedures.

Any air tests that are performed must be administered by qualified personnel. Educational employees who are asked to participate in the procedure should demand to be given full-face respirators. In addition, if the firm administering the air measurements uses phase contrasts microscopy (PCM) to measure fibers, the tests will be of little value. PCM cannot distinguish between very small asbestos fibers and non-

asbestos fibers. Therefore, the only air measurements that might be valid are those using electron microscopy (EM).

## Testing for Asbestos Hazards: One Method Preferred

If bulk sampling indicates that friable asbestos-containing materials are present in a school, they should be removed or properly covered. In either case, the abatement should be undertaken by highly trained and experienced specialists. Abatement work that is improperly carried out can make a bad situation even worse.

There are three ways to abate an asbestos health hazard: *removal*, *enclosure*, and *encapsulation*. If either of the last two methods are selected, the school also should institute an operations and maintenance program in order to spot any deterioration of, or damage to, the asbestos-containing materials or their covering that may occur in the future.

*Removal* of the asbestos is the only permanent—and most satisfactory—solution to an asbestos health hazard. Once the asbestos-containing material has been properly removed and replaced by some type of nonhazardous material, the potential for fiber release no longer exists. However, the initial cost of removal exceeds that of the other abatement methods.

*Enclosure* involves the construction with impact-resistant materials of an airtight ceiling or wall to cover a surface coated with asbestos-containing materials. Because the asbestos remains in the building—albeit hidden—the enclosure must be inspected periodically for damage. The initial cost of enclosure is lower than that of removal, but periodic inspections and subsequent repairs will increase the costs greatly. A properly constructed enclosure can effectively reduce, if not eliminate, asbestos health hazards during the remaining life of the building, and may be an acceptable method of abatement in situations where the location of the asbestos-containing materials would make removal impracticable or even dangerous.

The least effective—and also the least costly—method of abatement is *encapsulation*. This method involves the spraying of a sealant directly onto the asbestos-containing materials. Ideally, it provides some impact-resistance, although not as much as an enclosure. Encapsulation is inappropriate when the material is fibrous or fluffy or does not adhere well to the substructure. In addition, an encapsulation is more prone to deteriorate or be damaged as a result of impact or water leakage; thus, it requires frequent inspection and probably periodic reapplication of the sealant. For these reasons, NEA does not recommend the use of encapsulation as an abatement method.

Regardless of which method of abatement is selected, the persons carrying out the procedures should follow certain safety precautions. Failure to follow these precautions could result in the contamination of other areas of the school building, as well as exposure of the abatement workers to concentrated levels of asbestos.

The school building should be evacuated until the abatement has been completed. The work area should be sealed off completely with heavy plastic sheeting. Air movement within the work area should be controlled so that air flows in but escapes only through filters. All persons performing the abatement work should wear a full protective body suit and be equipped with a respirator. Access to the work area should be limited to persons wearing protective clothing and respirators. If removal is undertaken, the asbestos-containing materials should be wetted before they are removed. Any power tools used on the job must have special exhaust systems to capture asbestos fibers. Air tests should be performed regularly outside the work area to ensure that no asbestos fibers are escaping.

When the abatement is complete, or at the end of each workday, everyone leaving the restricted area should discard his/her protective clothing and shower in a special area before changing into street clothes. The protective clothing and plastic enclosure should be placed in sealed containers

and marked with warning labels. Similarly, all asbestos waste should be discarded in sealed containers with warning labels. Final cleanup should be undertaken with wet mops and a special High Efficiency Particulate Air (HEPA) vacuum cleaner. After the completion of the abatement activity, air tests should be taken to ensure that the air is not contaminated. Only then should educational employees and students be permitted to return to the area.

## Summary

Exposure to friable asbestos-containing materials significantly increases one's risk of developing asbestosis and several forms of cancer. Friable asbestos-containing materials are present in thousands of schools throughout the country, creating potential exposure problems for an estimated 15 million students and 1.4 million school employees.

Since these materials are flaky and crumble easily, only slight contact is necessary to cause them to release asbestos fibers into the air where they may be inhaled by building occupants. If an inspection of a school indicates the presence of friable asbestos-containing materials, they should be removed or, in some cases, enclosed with impact-resistant materials in such a manner as to prevent any release of fibers into the atmosphere. Regardless of which corrective procedure is selected, an extensive array of safety precautions must be followed closely during the abatement of the hazard so that asbestos fibers do not escape from the work area.

School employees and students should not participate in abatement procedures, nor should they occupy the building during these activities.They should return to the school only after the air has been tested and shown to be free of asbestos contamination.

*Chapter* **2**

# Asbestos and the Law: A Summary

## Federal Legislation

The only federal statute currently in effect that deals directly with asbestos in the schools is the Asbestos School Hazard Abatement Act of 1984 (ASHAA) (Title V of PL 98-337), which was signed into law in August 1984.

This Act authorizes the EPA to administer a program of technical and financial assistance to local school districts and private schools for the detection and abatement of asbestos health hazards. The Act authorized $50 million per year for Fiscal Year (FY) 84 and FY85, and $100 million per year for FY86-90. These funds are meant to assist those school districts which need the financial aid most, yet have the least ability to pay.

ASHAA works as follows:

- School districts receive applications for assistance from EPA. (Initial applications were sent out in December 1984.) In applying for funds the school district must include the following information in its application for each school: the nature and extent of its asbestos problem, the asbestos content of the material, the methods it will use for abatement, a description of its financial resources, and a justification for the type and amount of financial assistance requested.

In addition, the application must certify that any employee engaged in asbestos abatement is trained

equipped according to EPA standards, and that no child or inadequately protected school employee will be permitted in the area where asbestos abatement is occurring.

- The completed application then must be sent to the governor of the state or an agency designated by the governor. Each year, the governor must submit to EPA and the Secretary of Education (ED) a priority list of all schools that have applied for abatement funds, ranked on the nature and magnitude of the "existing and potential exposure presented by the asbestos materials." The governor must also send to EPA and ED the actual applications from the LEAs (Local Education Agency), and certify the financial need of the school based on a variety of financial criteria.
- EPA then decides which applicants will receive funds. EPA must consider the priority lists developed by the governors, the likelihood of release of asbestos fibers, any other evidence of risk caused by asbestos, the extent to which the applicant's proposed corrective action will reduce the exposure of school children and school employees, and the cost effectiveness of the corrective action proposed. No assistance is to be provided for projects that were completed prior to January 1, 1984 or where EPA determines that the LEA has resources adequate for the asbestos abatement.

Financial assistance may be in the form of a loan to cover up to 100 percent of the abatement costs or a combination of loan and grant, with the grant portion covering no more than 50 percent of the project. Grants may be made only where EPA determines the applicant is unable to carry out the abatement project with a zero interest 20-year loan.

For LEAs granted financial assistance, EPA must also establish procedures for abatement, replacing the removed asbestos with other materials, and restoring school buildings to conditions comparable to those which existed before abatement. EPA also is authorized to adopt other procedures, standards, and regulations as it deems necessary.

ASHAA also includes employee protection provisions which prohibit any state or local education agency from

discharging or discriminating against any employee with respect to "compensation, terms, conditions, or privileges of employment" because the employee has publicized information about asbestos problems in school buildings.

## EPA Requirements

In 1973, EPA issued regulations, based on the Clean Air Act, which banned spraying of asbestos-containing insulation in buildings, including schools. In 1975, the regulation was expanded to prohibit any pipe lagging containing asbestos, regardless of the method of application. In 1978, the ban on asbestos was broadened to prohibit all uses of this substance.

Even though the use of asbestos is now banned in schools, thousands of school buildings containing literally millions of tons of asbestos continue to pose health hazards.

EPA's initial response to this hazard was a totally voluntary program. In 1979, it instituted a Technical Assistance Program (TAP) which had two purposes: to encourage states and school districts to establish voluntary programs to detect and abate asbestos health hazards and to provide technical assistance to help them do so.

On May 27, 1982, EPA issued a regulation, "Friable Asbestos-Containing Materials in Schools: Identification and Notification," noting that "many school districts have not responded adequately" to EPA's TAP effort.

The rule required all public school districts and private elementary and secondary schools in the United States to comply with the following by June 28, 1983:

- inspect all school buildings to determine if they contain friable materials;
- take samples of friable materials that are found;
- using polarized light microscopy, anaylze all samples to determine if they contain asbestos; and
- keep records of those actions.

In schools where friable asbestos is found, the rule required those districts to:

- notify employees of the location of the materials;

- post a standard form in administrative and custodial areas;
- provide maintenance and custodial employees with instructions for reducing exposure to asbestos; and
- notify the children's parents, either directly or through the parent-teacher association.

However, school district compliance with this rule has been far from adequate according to an EPA study published in October 1984. By January 1984 only 11 percent of all school districts were in complete compliance with the EPA rule. In those school districts containing at least one building with hazardous asbestos, only four percent reported compliance with all aspects of the rule.

No current rule or regulation mandates that asbestos health hazards be abated and, in fact, EPA's 1984 study revealed that abatement work had been completed in only 44 percent of schools where inspections revealed hazardous asbestos.

NEA has joined with other labor and education groups to petition EPA to issue regulations that would establish clear standards for determining when asbestos is hazardous and require schools to perform abatement work. Unfortunately in November 1984, EPA formally rejected this request. NEA currently is attempting to persuade the Congress to enact legislation which would mandate such rules.

## Beyond EPA: Federal, State and Local Protections

There are dozens of laws, codes, and regulations at all levels of government that deal with employee and public safety and health in the school environment. Some deal directly with schools, while others affect schools indirectly. The intent of these laws vary—some establish standards, others usage levels, others prohibit the use of certain materials, some protect employees, and some protect the general public including students.

The following table provides an overview by source—federal, state, and local— of various laws, codes and regula-

tions which apply to students, the public, and educational employees. Subsequent sections deal in more detail with two sources of employee protections: OSHA and Worker Compensation.

| | Right-to-Know | OSHA | Worker Compensation | Labor Statutes | Building, Fire, & Health Codes |
|---|---|---|---|---|---|
| Students | 2 | | | | 1,2 |
| Public | 2 | | | | 1,2 |
| Educational Employees | 2,3 | 2,3 | 2,3 | 2 | 1,2 |

1=Local statute or ordinance

2=State statute or ordinance

3=Federal level statute or regulation

## The OSHA Role

The Occupational Safety and Health Act (OSHA) has jurisdiction only over employment conditions of private sector employees; thus public schools normally would be excluded from OSHA coverage. Section 18 of the OSHA Act, however, requires that public employees be afforded OSHA protections in states which elect to operate their own job safety and health programs approved by OSHA. In school districts which contract out services such as food service and maintenance work, OSHA has jurisdiction. Currently, 22 states and three territories administer their own federally-approved OSHA programs, and therefore cover public employees. These states are: Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

In addition, another 11 states and the District of Columbia have consultation agreements with OSHA. Those states

are: Alabama, Arkansas, Delaware, Florida, Idaho, Massachusetts, Missouri, Oklahoma, Rhode Island, Texas, and West Virginia.

All of the 34 "state-plan states" are required to adopt and enforce OSHA's standards or a standard with equivalent protection. OSHA also requires regular inspections to determine if standards are being met, and on-site consultation at the request of the employer or employee organization to help identify and correct workplace hazards. The OSHA rules also set requirements for monitoring, medical surveillance, labels, waste disposal, recordkeeping and change-of-clothing rooms.

The 34 "state-plan states" also must comply with the OSHA asbestos standard or an equivalent rule. This standard, first issued on June 7, 1972 and still in effect today, sets a permissible eight-hour exposure limit of two fibers of asbestos per cubic centimeter of air, with a maximum ceiling concentration of ten fibers per cubic centimeter at any one time. The OSHA standard was set to measure air contamination in the manufacturing and construction industries. It is very weak and inadequate in a school setting because it measures large particles as opposed to microscopic fibers that are released by friable asbestos materials.

Affiliates who might consider calling in OSHA to their districts to conduct an air measurement test in order to confirm their suspicions that asbestos is contaminating the air may be surprised to find that the OSHA test will find to the contrary and give the district a clean bill of health. Therefore, use OSHA as a last resort. Check with your state to see if it has a lower asbestos standard.

OSHA proposed, on April 10, 1984, a revision to this asbestos standard that would reduce permissible exposure limits, on an eight-hour average, to either 0.5 or 0.2 fibers per cubic centimeter. A revised asbestos regulation is expected to be issued this year; however, any new standard will probably take effect nearly one year after it is issued.

If your school is located in a "state-plan state," these OSHA rules are one source for worker protection. However, OSHA's statutory authority extends only to employers and their employees; students are not covered.

## Worker Compensation

Worker Compensation is the quickest way to redress claims for work-related accident/disease that render an employee unable to work.

In the event of illness/accident which is perceived to be work-related, a claim should be filed immediately. Most states allow the filing of retroactive claims for recovery of medical expenses. The rules vary from state to state. One rule is crucial in order to establish a benefits claim. Employees must maintain records that indicate where and when they first came in contact with asbestos, as well as subsequent work assignments which may have put them in contact with asbestos materials. A very important record is x-rays taken before or shortly after contamination as well as annual x-rays. Affiliates should be aware that the responsibility for record-keeping in the event of a future claim is largely that of the employee(s) not the employer.

Virtually all states require school district employers to extend worker compensation to education personnel in the event of work-related accident or illness. Coverage is obtained by most states through an insurance policy. The actual method of coverage varies among and within states.

All state worker compensation laws cover all diseases, including asbestos-related diseases, and a majority of the states' laws provide time limits for filing an asbestos-related claim.

Virtually all states pay an income benefit of at least 60 percent of wages in the event of disability. Most states set time limits for paying partial disability claims.

Each state has a Worker's Compensation Commission or its equivalent in the state capital. The Commission or Bureau is usually a part of the state's department of labor or

industrial relations commission. Satellite offices of the Commission usually are located in large urban centers within a state.

There is also legislation pending in Congress which would establish a fund to compensate individuals suffering from asbestos-related diseases. Funding would be a joint effort of the Federal government and the asbestos industry.

## Summary

The Congress has enacted the Asbestos School Hazard Abatement Act (ASHAA) which authorizes $600 million over seven years in the form of loans and grants to school districts for asbestos abatement. So far, only $50 million actually has been allocated for this program. School districts interested in obtaining some of these funds were supposed to apply to their governor by February 15, 1985, with initial awards to be made by EPA in June, 1985.

EPA regulations required all schools to inspect for friable asbestos and analyze suspected materials. If asbestos was found, the school district was to notify school employees and parents and post warning notices. All schools were required to be in compliance by June 28, 1983.

The Occupational Safety and Health Administration (OSHA) has rules which set limits on exposure to asbestos in the workplace. While public employees generally are not covered by OSHA rules, in 33 states and the District of Columbia, they are covered by equivalent state standards.

Most states have Worker Compensation laws which afford educational employees the opportunity to file claims over work-related injury and disease, including those caused by exposure to asbestos. Various other statutes offer protections to educational employees, students, and the general public.

*Chapter* 3

# Suing for Safety

## Entangling Legalities

When considering how most effectively to utilize its resources in addressing the problem of asbestos health hazards in the schools, NEA was required to set priorities. Often the process of prioritization involved difficult choices. For example, when forced to decide whether to emphasize abatement of the hazard or remedies for the victims of exposure, NEA chose to pursue abatement. That is not to say that NEA is unconcerned with the plight of those who have been exposed to asbestos health hazards in the schools or who have developed asbestos-related illnesses. It merely reflects NEA's conclusion that by channeling its resources toward securing the elimination of further exposure of school employees and students to asbestos health hazards in the schools, it would do more good for more people.

Similarly, NEA had to make a choice with regard to the most effective means of securing this abatement. The means it considered were legislation and administrative regulations, the collective bargaining process, and litigation. Because of the expense and uncertainty involved in litigation, NEA determined that the legislative/administrative and/or collective bargaining options would constitute the most effective means of ridding the schools of asbestos health hazards. However, litigation does remain an option, albeit not the favored one. For those affiliates considering lawsuits as a means of dealing with the problem of asbestos health hazards in the schools, the following summarizes the legal

activity that has taken place to date and briefly discusses some of the relevant legal theories.

Lawsuits can be a source of monetary relief both for school districts seeking funds to pay for the abatement of asbestos health hazards in their facilities, and for individuals who are being, or have been, exposed to asbestos in the schools. Educational employees and students also may be able to secure court orders requiring school districts to abate their asbestos hazards.

In the early 1980s, school districts began to file product liability lawsuits under state law against the manufacturers, distributors and installers of asbestos-containing products. In these lawsuits, the school districts have sought funds to cover the costs of testing and abatement. Most of these legal actions are pending; however, a suit filed by the school district in Lexington County, South Carolina resulted in a $675,000 settlement.

## National Suit in Dispute

In addition to the lawsuits brought by various school districts, a national class action lawsuit against asbestos manufacturers has been filed in the federal district court in Philadelphia. The school districts listed as plaintiffs in this lawsuit purport to represent all the school districts in the country. Currently the parties are in dispute over whether such a national class can be maintained and whether all school districts must participate in the lawsuit.

Many small school districts, or those with relatively minor asbestos problems, generally support the idea of some form of class action since they probably would be unable to afford individual suits on their own. Larger school districts, however, such as the Los Angeles Unified School District, want a guarantee that the class action format will not preclude them from maintaining their own lawsuits against manufacturers.

The aforementioned lawsuits filed against the manufacturers of asbestos-containing materials generally have not included the Manville Corporation as a defendant. The Man-

ville Corporation was created as a successor to Johns-Manville when the latter filed for reorganization under the Federal Bankruptcy Act. Johns-Manville had been the largest producer of asbestos-containing building materials. It filed for bankruptcy to escape what it projected would be huge damage claims that would be filed in the future by persons exposed to its materials. Because Manville is in bankruptcy, any claims against it must be filed only with a federal bankruptcy court. The deadline for filing such claims was January 31, 1985.

Individuals who are being, or have been, exposed to asbestos in the schools are beginning to file their own lawsuits under state law against the manufacturers, distributors and installers of asbestos-containing products, and against the school districts and school board members responsible for the buildings in which the exposure has been taking place. In some cases, the individual, or his/her survivor, seeks compensatory and punitive damages as relief for the development of an asbestos-related disease. Lawsuits also may seek funds for medical monitoring of groups of individuals who have been exposed to asbestos in the schools.

In seeking funds for medical monitoring, the New Jersey Education Association (NJEA) has brought a lawsuit against (1) more than one-hundred asbestos manufacturers, distributors, installers, and removal contractors, and (2) more than one-hundred school boards in the state. Against the former group of defendants, NJEA has brought product liability claims. Against the latter group, it has charged that the school boards knew or should have known of the dangers inherent in the asbestos-containing products they purchased for use in their schools, and that they intentionally, fraudulently, negligently, or with gross negligence, failed to inform educational employees of the danger and failed to take steps to prevent their exposure to the hazardous substance.

In addition to the types of legal action listed above, which are based on state laws, it also may be possible to bring a

claim for damages under federal law in which school board members would be charged with personal liability for damages to educational employees and students. A school board member who knowingly and personally acted to cause continuing exposure to asbestos may have violated the employees' and students' constitutional rights as protected by 42 U.S.C. 1983.

Aside from providing monetary damages, litigation may provide a basis for compelling school districts to abate the asbestos health hazards in their facilities. A state's statutory code might contain sections that would impose upon certain state or local officials a legal duty to maintain safe and healthful conditions in the schools. Such a duty might originate in the statutes pertaining to education, labor, air pollution, or the control of toxic substances. In addition, the source of the duty might be found in the language of a state's constitution.

## Beware the Risks

Before rushing into any type of litigation, however, members and affiliates should make a realistic assessment of its risks and costs. Litigation with regard to the presence of asbestos in the schools is really uncharted territory. As of this writing, only one school asbestos lawsuit has been decided by a jury trial, and in that case, two asbestos manufacturers—U.S. Gypsum and National Gypsum—prevailed over a county board of education in Tennessee. Thus, it is by no means certain that companies, school districts, or school officials would be held in violation of some legal duty as a result of any acts or omissions concerning the presence of asbestos in the schools.

Furthermore, as of this writing, no court has ruled on whether the presence of asbestos in a school building constitutes the *legal cause of injury* to the building's occupants. In addition, statutes of limitations might pose problems to litigants.

As a result of the lack of legal precedent, any litigation that is undertaken may prove extremely expensive. In product liability lawsuits, it may be difficult to identify which companies actually manufactured, distributed, or installed the asbestos-containing products in a particular school. Discovery of this fact alone may take considerable time, to say nothing of the effort that will be required to produce other evidence sufficient to establish the companies' liability. With regard to the latter, it probably will be necessary to retain medical and scientific experts to testify as to the nature of the health risk.

There is one additional avenue open to settle personal liability claims. An Asbestos Claims Facility was recently established by six major asbestos manufacturers and six insurance companies as an alternative to court action.

A claimant would have to submit information to the Facility which then would determine if the claimant has an asbestos-related condition.

If the claimant qualifies, the Facility then would attempt to reach a negotiated settlement of the claim. If unsuccessful, the Facility would offer mediation to reach resolution. As this handbook went to press, plans called for the Facility to be headquartered in Boston, with a claims office in San Francisco.

## Summary

Litigation with regard to asbestos in the schools has taken several forms, all of which may affect educational employees. School districts have filed lawsuits—either in an individual capacity or as a class—against manufacturers, distributors, and installers of asbestos-containing products. If these suits are successful, they could provide the districts with money to help defray the cost of abatement. In addition, individuals—or their representatives—who have been or are being exposed to asbestos health hazards in the schools are beginning to file lawsuits against manufacturers, distributors, and installers

of asbestos-containing materials as well as school districts. These suits generally seek monetary or medical relief. It also may be possible to use the courts to compel a school district to abate asbestos health hazards.

However, the litigation regarding exposure to asbestos health hazards in the schools is a relatively novel undertaking. A lawsuit may be very expensive, and the chances of its success are uncertain at this point in time.

*Chapter* 4

# Strategies To Rid Your School Of Dangerous Asbestos

## Obstacles To Overcome

As the issue of asbestos in the schools draws more and more media attention, school districts are responding, but too many are still dragging their feet, especially when it comes to reporting asbestos problems to school staff and the public. Now's the time to find out what's going on in your district. To that end, NEA has developed the following set of steps which your Association can use as guidelines for addressing the asbestos issue. Be aware, however, that there are several factors which could impede your Association's efforts to rid your schools of asbestos health hazards.

*Money:* The Department of Education has estimated the average cost of asbestos abatement to be $100,000 per school. Few school districts have earmarked enough funds to pay for abatement activities. Only a handful of states have set aside funds which local districts can tap. And the federal government has so far appropriated just $50 million to aid local districts in cleaning up asbestos hazards. This money is supposed to be distributed by EPA by June 6 this year.

*Schedule disruptions:* Few districts will want to undertake asbestos cleanup during the school year, because that will mean (if the job is properly done) shutting down the schools while the cleanup takes place. Most will opt to conduct these operations during the summer months, a logical and proper decision only *if* the presence of asbestos does not present a clear and immediate danger. You may want to investigate

the situation in your school to help determine whether that immediate danger exists.

*Lack of information:* Despite all the attention paid to the dangers of asbestos contamination, information on how to proceed has been very spotty and sometimes inaccurate, causing local school districts to act very cautiously, very slowly, if at all. That's one of the reasons why NEA has published this handbook. As much as it is a resource for your Association, it can also be helpful to your district's administration.

*Fear of causing panic in the community, particularly among parents of schoolchildren:* Lack of sufficient information for identifying potentially hazardous asbestos installations and money for eliminating them also have caused districts to go slowly for fear that publicity about the problem might cause an outcry from the community—an uproar which administrators and school boards wouldn't be prepared to handle. Here's where you can help, by acting as both a resource and an advocate for a sound, reasoned asbestos abatement program. No one wants panic, but neither can your district afford to do nothing simply because it doesn't have the facts.

*Lack of aggressive government action:* The federal government's response—and specifically the relative lack of action by EPA, Congress, and the Administration with regard to the asbestos problem—has hindered a nationwide effort to rid schools of asbestos hazards. Congress has known of the hazards for at least five years, but never appropriated any money for abatement efforts until this year, and then only $50 million. EPA, even more aware of the dangers, has stepped up its asbestos control programs, but just recently decided not to issue specific hazard guidelines or abatement requirements to help local school districts. And at this time, it's still questionable whether the agency even will support more federal aid to help in the cleanup effort. The Reagan Administration has included no requests for asbestos abatement funds in its FY86 budget. Most state governments,

with a few exceptions, are not helping local districts set up effective asbestos identification and control programs, and even fewer provide any significant funds for the effort. The response from most municipalities is to let the school districts deal with the problem.

Despite these obstacles, your local Association can be a leader. It will require a commitment of each and every member. The following suggested steps offer some advice on how to proceed.

## Getting Started

*Set up or reactivate your safety and health committee*, and make sure it includes ESP members. This is your oversight group which should include your Association officers, Uni-Serv representative, and a faculty or building representative from each school in your district. The committee should maintain accurate records of exposure or probable exposure. These records should include the employee's name and location and date of exposure.

*Do your homework*. Members of the committee first must familiarize themselves with the asbestos problem and then make sure each and every member of the Association is informed of the potential courses of actions. Review previous sections of this handbook for an overview of the problem, suggested legal remedies, health and safety laws which might protect Association members, and other information. More specific details on these areas are available through your state Association.

*Check your contract*. Many Association contracts don't have safety and health clauses. If you're currently bargaining a contract, or will be, consider adding a clause with some teeth in it that would afford members the right not to work where their health might be endangered by present, or potential asbestos hazards. Remember too that your contract's grievance clause also might provide protections against being forced to work under hazardous conditions, including

places known to contain crumbling asbestos. The following is an example of contract language which could be negotiated.

## I. Protection of Employees *[partial article.]*

### A. Safety and Health

1. The District shall be responsible for providing and maintaining conditions of employment free from hazards that are causing, or are likely to cause, accident, injury, or illness to employees.

2. The District's occupational safety and health program shall comply with all relevant federal, state, and local requirements.

3. The District shall notify all employees of and promptly abate any unsafe or unhealthful working condition.

4. The District and the Association agree to cooperate in a continuing effort to eliminate and/or reduce the possibility of accidents, injuries, and health hazards in all areas under the District's control.

## II. Asbestos in District Facilities

### A. Policy

1. The District and the Association acknowledge that the presence of friable asbestos in District facilities poses a serious health hazard for all employees and students and agree that elimination of this hazard is a matter of the highest priority.

2. The District will take all actions necessary to comply with federal, state, and local requirements regarding asbestos, including the Asbestos School Hazard Abatement Act of 1984, which are currently applicable or which may become applicable during the term of this Agreement. The District will further act to comply with all provisions of this Agreement relevant to protecting the health of employees.

3. The District will notify the Association of, and invite it to send a representative to, any meeting of District officers or personnel pertaining to asbestos.

## B. Inspection/Detection

1. Within 60 days of ratification of this Agreement, the District will hire an expert in asbestos detection and analysis to conduct a complete inspection for the purpose of detecting the presence of friable asbestos, of all areas of each of its facilities in which employees may at any time be present.

2. The District shall notify the Association of the time and place of each such inspection, and a representative of the Association may accompany any inspection.

3. Inspections shall cover all areas within each building or facility, including (1) ceilings and walls in hallways, classrooms, gymnasiums, swimming pools, auditoriums, cafeterias, machinery and storage areas, (2) support beams and columns, and (3) pipes and boiler areas. Inspections shall include areas behind suspended ceilings, nonpermanent concealed areas which may be entered during normal maintenance and repairs, and areas used as parts of a ventilation system.

4. Any friable materials that are discovered during the course of the inspections shall be analyzed for their asbestos content.

## C. Notice

1. The District shall promptly notify all employees, the Association, the PTA and all relevant governmental agencies of the existence of friable asbestos in any of its facilities.

2. If friable asbestos is found to be present, the District shall permit all employees in the bargaining unit to meet together during the normal workday for the purpose of discussing that situation. In addition to District personnel, local public health officers and representatives of the Association shall be invited to the meeting. Employees shall have a full opportunity at the meeting to ask any questions concerning the implications of the presence of asbestos. The Association shall have the opportunity at the meeting to explain all contractual and statutory rights of the employees. The District shall bear the reasonable cost of bringing to the meeting an occupational health expert of the Association's choice.

3. If friable asbestos is found to be present, the District shall also notify all past employees of their potential exposure; shall provide the names and addresses of all such past employees to the Association; and

shall mail to such past employees, at District expense, materials prepared by the Association regarding potential asbestos exposure hazards and their relevant contractual and statutory rights.

4. The District will provide the Association with one copy of each report it is required to file with any governmental agency regarding the detection or abatement of asbestos.

### D. Abatement

1. The District will take all actions necessary to promptly abate any friable asbestos hazard by the method safest to employee health and welfare.

2. No employee who has not been trained and properly equipped in conformity with *applicable standards* of OSHA to perform asbestos abatement tasks shall be required to perform such work.

3. No employee who is not adequately protected under applicable EPA standards shall be permitted in any area where asbestos abatement is occurring.

### E. Transfer of Employees and/or Operations

1. Any District facility which presents a clear asbestos health hazard will be closed pending abatement.

2. Employees will be paid as usual while repairs are being made.

3. If the District transfers operations from a closed facility to another pending abatement, any temporary transfers of employees shall be considered of an emergency nature for purposes of the relevant sections of this Agreement.

4. If the District does not transfer operations pending abatement, it will seek a waiver from the relevant state agency for any school days lost as a result of the closing. In the event that additional days and/or hours are added to the school calendar as a result of the closing, the affected employees will be paid *pro rata* for all additional time required.

### F. Employee Health Protection

1. If friable asbestos is found in a District facility, any current or past employee will be entitled to receive one physical examination each year

for the purpose of testing for asbestos-related illness, performed at District expense by a doctor of the employee's choice.

2. Any sick leave taken in connection with an asbestos-related illness will not be deducted from the employee's regular accummulated sick leave. Further, the amount of sick leave taken for this purpose will be unlimited.

### G. Insurance Coverage

1. The District and the Association recognize that because asbestos-related illnesses have an extremely long latency period, symptoms of such illnesses may not emerge for many years. It is the intent of the parties to provide insurance protection against the possibility of future illness for all current and past employees who may have been exposed to asbestos while working for the District.

2. The District will provide $250,000 of life insurance as well as disability and full income-protection insurance coverage, at its expense, to all current and past employees who may have been exposed to asbestos while working for the District. Such insurance will provide benefits in the event of an asbestos-related illness, disability, or death. The life and disability insurance will continue for the life of the employee.

3. Within 30 days of the detection of friable asbestos in any District facility, representatives of the District and the Association will meet for the purpose of selecting an appropriate insurance plan to meet the needs of such employees and the requirements of this Article.

## Of Special Note to Nonteaching Staff

Often nonteaching employees are in the most danger when it comes to exposure to asbestos health hazards. Their workplaces are likely to be filled with hazardous asbestos-containing materials. Key locations are boiler rooms which contain insulated pipes and boilers, shops where district vehicles are repaired, storerooms, and other locations—ceilings, floors etc., with which employees come into contact in the normal course of doing their jobs.

Remember, too, that many districts hoping to save money will try to assign custodial and maintenance personnel to the asbestos cleanup effort. Don't let this happen. Asbestos abatement should only be done by trained, qualified technicians, employed by licensed reputable firms. (For further information see the organizational listings at the end of this chapter.) If your Association represents educational support staff, consider negotiating contract clauses—or in non-bargaining states, an agreement—stipulating that (1) workers do not have to accept asbestos-related work, (2) employers will provide training at their expense for workers who must be assigned these projects, and (3) that employers will pay for annual checkups for those who might be exposed to asbestos.

## The Probe Is On

You have a right to know whether your school district's buildings contain asbestos hazards. The only way to find out is to formally request this information from the district superintendent or his staff. Following is a copy of the sample letter to the school superintendent and a list of questions that were sent to your local Association by the state affiliate to help you obtain this information.

Dear Superintendent _____:

I am writing on behalf of the XYZ Education Association to ask your help in our effort to determine if friable asbestos is present in our district's schools. Please assist us by filling out and returning the enclosed questionnaire.

Exposure to friable asbestos poses a serious health hazard to all employees who work in the district buildings, members of the public who use district buildings, and students who attend classes in the buildings.

An inspection for the presence of friable asbestos in all district buildings has probably already been performed in accordance with

federal law. We would appreciate your referring to your inspection records when filling out this questionnaire.

The questionnaire will meet two very important objectives. First, The inspection and cleanup efforts reported on the questionnaire will demonstrate the joint Association-District commitment to the health and safety of employees, students, and the general public.

Second, by sharing this information, you will be contributing to the efforts of education organizations at the local, state, and national levels to secure technical assistance and funding for the elimination of asbestos health hazards from our schools.

Cooperation in ridding our schools of the asbestos hazard is in our mutual best interest. Please take the time to respond to this request within _____ days from the date of this letter and then return the completed questionnaire to me in the enclosed, self-addressed stamped envelope.

Thank you for your cooperation.

Sincerely,

1. How many buildings are in our school district?

_____ (Include warehouses, garages and those that house mechanical, electrical, gas, and water works, as well as those that have classrooms.)

2. Have all the buildings been inspected for friable asbestos-containing materials? (Check ONE.)

_____ Yes, inspection is complete.

_____ Yes, inspection is now in process.

_____ No, but we plan to do so on _____ (date).

_____ No, and we have no plans to do so at this time.

If you answered YES to Question 2, please continue.
If you answered NO to Question 2, please sign and return.

2a. Who performed the inspections? (Check ALL that apply.)

_____ School maintenance personnel

_____ School administrators

_____ County health department

_____ City health department

_____ State health department

_____ State or federal OSHA

_____ Environmental Protection Agency (EPA)

_____ Architect

_____ Outside consultant firm

_____ Other (Specify: _____)

2b. If the inspection revealed friable material, was there a laboratory analysis? (Check ONE.)

_____ Yes.

_____ No.

Check here if the laboratory participated in EPA's bulk asbestos sample quality assurance program. _____

2c. Were any buildings found to contain friable asbestos?

_____ Yes.

_____ No. (STOP, sign and return questionnaire.)

2d. How many buildings were identified as containing friable asbestos?
_____

2e. Where were the friable asbestos-containing materials found? (Check ALL that apply.)

_____ Auditoriums

_____ Classrooms

_____ Cafeterias

_____ Boiler rooms

_____ Hallways/corridors

_____ Garages

_____ Offices

_____ Music rooms

_____ Gymnasiums

_____ Sound control and projection rooms

_____ Lobbies

_____ Service buildings

_____ Air ventilation shafts

_____ Other (Specify: _____)

2f. What steps have been (or will be) taken to prevent building occupants' exposure to friable asbestos? (Check ALL that apply.)

_____ Complete removal of material

_____ Enclose it with an air-tight material

_____ Encapsulate it with a spray-on sealant

_____ Monitor it continuously under an operations, maintenance, and reinspection program

_____ Warning notice posted in affected area

_____ School closure

_____ Wrapping of pipes with duct tape

_____ Nothing has been (or will be) done

_____ Other (Specify: _____)

2g. Was notification given to:

Parents _____ Yes

How _____ (method)

When _____ (date)

_____ No.

Employees _____ Yes.

How _____ (method)

When _____ (date)

_____ No.

3. How much did the district spend for inspection and/or abatement of asbestos health hazards?

| Inspection | | Cleanup | |
|---|---|---|---|
| Per Building | $_____ | Per Building | $_____ |
| Total | $_____ | Total | $_____ |

4. What was the source of the funding? (Check ALL that apply.)

_____ General operating budget

_____ Tax levy

_____ Bond issue

_____ State funds

_____ Federal funds

4a. If the funds for the inspection and/or abatement come out of the operating budget, were these funds: (check where applicable)

Budgeted for _____ inspection _____ cleanup?

Shifted for _____ inspection _____ cleanup?

5. Did the allocation of funds for hazardous asbestos abatement result in a cutback of programs or services?

_____ Yes. _____ No.

If yes, what programs or services were cutback? _____

_____

_____

6. Name, title, phone number of person completing this questionnaire:

_____

_____

Thank you. Please return this questionnaire by _____ to:
(date)

_____
(address)

If the district has addressed its asbestos problems properly, administrators should have no difficulty finding and supplying answers to your inquiry. Note: If your school district is one of those which has applied to EPA for federal funds to help in asbestos abatement, the district should have a copy of the application on file. This application covers many of the same areas referred to in the sample questions above.

## What To Do Next

Once you receive the district's completed questionnaire, make sure all survey questions are answered in full. Seek clarification of any survey responses which aren't clear. If the answers indicate that friable asbestos-containing materials are

present in the district's buildings, ask the district to indicate exactly where such materials are located in each building. Also ask the district to indicate where asbestos has been encapsulated or enclosed, and whether the district plans to reinspect these areas regularly to detect future damage or deterioration. The information provided by the superintendents, along with a list of the employees working in the buildings containing friable asbestos or asbestos that has been enclosed or encapsulated, should be retained indefinitely by local Associations. In any event, keep a copy of the completed questionnaire and send a copy to your state Association.

## What If Your Administration Fails To Respond?

Federal law says local officials must inspect for, and let the community and school staff know, what is being done to eliminate asbestos dangers. Hopefully, the steps outlined above will have resulted in your local Association receiving this information; but if your district doesn't respond to your inquiries, let your state Association know this. (State Associations will tabulate this information and pass it on to NEA, which also will then inform EPA officials in Washington, D.C.)

The next step is to call your regional office of EPA and ask for an asbestos coordinator. There are ten offices which cover the nation. Their locations and phone numbers are listed beginning on page 45.

Ask the coordinator to call or write your local superintendent informing him of your and the community's rights to know whether hazardous asbestos is present. Request that EPA audit your district's asbestos records.

It may take some time for EPA to respond to your request, so you must be prepared to force local compliance. If you have reason to suspect that friable asbestos may be present in your schools, try to get a qualified independent person or firm to inspect the premises and analyze the

composition of any friable materials that are found. (See organizational listings at the end of this chapter.) Enlist the support of your local PTA in requesting local administrators and the school board to permit this inspection. Ask the parents group to put the asbestos problem on the top of its agenda for the next meeting. Also consider joining forces with other groups—labor, public interest, and others—who share your concerns. The broader the coalition, the less you will be perceived as representing special interests.

Publicize the asbestos problem. Invite media representatives to attend the PTA meeting. You also might offer several knowledgeable Association members to brief the media prior to the meeting. Make sure that at that meeting you have knowledgeable Association members and any other technical personnel available to explain the problem and offer solutions. In this and any other subsequent action, make it plain to the community that this is not just a self-interest issue, that the welfare of children *and* staff is your concern.

## Pressing For Action

If after repeated requests and a reasonable period of time, the school district still has not responded, consider filing a lawsuit under 15 U.S.C. § 2619(a) (1), claiming that the district has failed to comply with the regulations established by the EPA in 40 C.F.R. § 763(1982). (See Chapter 3 of this handbook.) Before bringing such a suit, however, make sure that the school district has failed to maintain the records required by EPA, or that the schools contain friable asbestos-containing materials and that the administration never notified you of that fact.

While the lawsuit is pending, or if you choose not to pursue legal action, request that the school board put the asbestos question on the agenda for its next meeting. Again, at the meeting provide knowledgeable speakers and technical experts who can address the problem. Make sure the media

and PTA know the issue will be discussed, and that media representatives have all of the resource materials necessary to report on the issue and the actions of the board.

If the school board and administration still take no action, contact your local and state health officials, state legislators, governor's office, and U.S. Senators and Representatives, letting them know of your concerns and the lack of progress locally. Call EPA again and let them know that you still have not received the information you requested. This notification might speed up the agency's response to your earlier call for an audit of the district's asbestos records.

If your school is located in an OSHA "state-plan state," (see Chapter 2, pages 17 and 18, for listing) find out if the school knows of its responsibilities for worker safety. Call for an OSHA investigation if you suspect violations.

Accompany EPA officials on their tour of district buildings. Don't rely on administrators to pass on to you the results and recommendations of the officials. Follow up to see that all recommendations are implemented in a timely and efficient manner.

If, after a general Asssociation meeting to assess the situation, members decide that some type of job action is the only way to get a response, make sure that action is covered legally. Other more subtle protests—staff wearing painters' or surgical masks to school, for example—might be just as effective in drawing attention to the situation as open confrontation.

## Summary

None of the procedures outlined in this chapter carries a guarantee of success in ridding your schools of asbestos health hazards. But applying these guidelines can help your Association design its own game plan for action. Be aware that there are several obstacles working against you, notably the lack of knowledge about asbestos health hazards, and a shortage of money to deal with the problem. The information you request from the district superintendent revealing

just what has been done about asbestos health hazards is a key piece of information which will determine all future strategies. Once that information is in hand, you can begin to utilize the various governmental agencies, the media, the PTA and others to press your case for the abatement of asbestos health hazards. Listed on the following pages are the names, addresses and phone numbers of a variety of organizations which can assist you.

## NEA Offices

1201 16th St., NW
Washington, DC 20036.

**Government Relations** (202) 822-7300 monitors any potential or final legislation dealing with asbestos hazards as well as the work of agencies (including EPA) charged with carrying out laws passed by Congress.

**Communications** (202) 822-7200 staff is charged with publicizing in *NEA Today*, the Association's monthly newspaper, and in other publications the joint efforts of NEA, state, and local affiliates to rid schools of asbestos health hazards. External press contacts also issue press releases and help reporters find the facts about asbestos materials used in schools.

**General Counsel** (202) 822-7035 has responsibility for monitoring litigation on asbestos matters.

**Research** (202) 822-7433 is the clearinghouse for nearly everything NEA has on asbestos hazards, including surveys, studies, news reports, and related material.

**Affiliate Services** (202) 822-7749 provides expertise in bargaining contract protections or, in those states without legal bargaining, other helpful negotiating strategies.

## State Affiliates

**Hawaii State Teachers Association (HSTA)** (808) 833-2711
Hawaii was one of the first states to initiate a statewide program to remove hazardous asbestos materials from its public schools and other public buildings. HSTA, in coalition with other organizations, lobbied for the legislation which led to the cleanup effort during the late seventies.

**New Jersey Education Association** (NJEA) (609) 599-4561
NJEA has sued school districts (more than 100) in an effort to establish a special trust fund to pay for the costs of regular checkups for members who may have been exposed to hazardous asbestos. In addition, several NJEA-affiliated locals have taken their own action to rid their schools of asbestos contamination. The key in New Jersey is the cooperative efforts of NJEA teachers and support staff.

**Ohio Education Association** (OEA) (614) 228-4526
**Pennsylvania State Education Association** (PSEA)
(717) 255-7000
Both associations have succeeded in getting bills introduced into the state legislature calling for state funding of asbestos abatement projects. PSEA's bill calls for a referendum on a statewide bond issue which would raise some $300 million to finance hazardous asbestos cleanup in some 1,200 schools. In Ohio, OEA lobbyists are calling on the legislature to appropriate some $170 million from the state lottery for asbestos abatement projects in some 2,700 schools.

## Local Affiliates

**Idaho:** Contact Jim Shackelford, UniServ Director, Coeur d'Alene: (208) 667-0515.
One member of the Sagle EA touched off a campaign to rid her school of asbestos health hazards, and that eventually led to a countywide asbestos removal effort. The key ingredients in this success story: strong local Association support, backed

by technical and general support from the UniServ staffer, community outreach, especially to parents, and other technical aid from EPA.

**Louisiana:** Contact Parents Asbestos Committee, 412 Daniel St., Opelousas, LA 70570 or Louisiana Attorney General William Fontenot, P.O. Box 44005, Baton Rouge, LA 70804 (504) 922-0187.

Parents were the first to find out that several schools in this 18,000-student school district contained hazardous asbestos. A committee was formed, which solicited the help of EPA, NEA, U.S. Representatives and Senators, Dr. William Nicholson of New York's Mount Sinai School of Medicine, Attorney General William Fontenot, and others who helped convince the school board to rid the schools of asbestos health hazards. The cleanup job was conducted during the summer and completed before the start of school in the fall of 1984.

## U.S. Environmental Protection Agency (EPA)

**Asbestos Action Program,**
401 M St., S.W. TS788A, Room 627, East Tower,
Washington, DC 20460
To respond to questions on the Asbestos-In-Schools Identification and Notification Rule: Dave Mayer: (202) 382-3949.

EPA Hotline for asbestos questions (800) 424-9065 or (202) 544-1404

## Regional Offices

**EPA, Region I**
Mr. Paul Heffernan
Asbestos Coordinator
Air & Hazardous Material Div.
JFK Federal Building
Apt. 2311
Boston, MA 02203
(617) 223-0585

**EPA, Region III**
Ms. Pauline Levin
Asbestos Coordinator
841 Chestnut Bldg.
Philadelphia, PA 19107
(215) 597-9859

**EPA, Region II**
Mr. Arnold Freiberger
Asbestos Coordinator
Woodbridge Avenue
Edison, NJ 08837
(201) 321-6668

**EPA, Region IV**
Mr. Jim Littell
Asbestos Coordinator
345 Cortland Street
Atlanta, GA 30365
(404) 881-3864

**EPA, Region V**
Dr. Anthony Restaino
Asbestos Coordinator
230 S. Dearborne Street
16th Floor
Chicago, IL 60604
(312) 886-6003

**EPA, Region VIII**
Mr. Steve Farrow
Asbestos Coordinator
Toxic Substances Branch
1860 Lincoln Street
Denver, CO 80295
(303) 293-1730

**EPA, Region VI**
Mr. John West
Asbestos Coordinator
Inter First Building
1201 Elm Street
Dallas, TX 75270
(214) 767-2734

**EPA, Region IX**
Ms. JoAnn Semones
Asbestos Coordinator
215 Fremont Street
San Francisco, CA 94105
(415) 974-8588

**EPA, Region VII**
Mr. Wolfgang Bradner
Asbestos Coordinator
Toxic Substances Branch
726 Minnesota Avenue
Kansas City, KS 66101
(913) 236-2835

**EPA, Region X**
Mr. Walt Jaspers
Asbestos Coordinator
1200 Sixth Avenue
Seattle, WA 98101
(206) 442-2870

**EPA Bulk Asbestos Sample Quality Assurance Program**
Research Triangle Institute
P.O. Box 12194
Research Triangle Park, NC 27709
(800) 334-8571, ext. 6741
Provides advice on asbestos sampling methods and qualified laboratories plus other technical advice.

**EPA Technical Assistance Centers**

**William M. Ewing**
Leader, Asbestos Programs Group
Georgia Institute of Technology
Area 2, Bldg. 49c
Atlanta, GA 30332
(404) 894-3806

**Janet Oppenheim-McMullen**
Project Coordinator
Asbestos Information Center
Tufts University
Graves House
18 Latin Way
Medford, MA 02155
(617) 381-3531

**Lani Himegarner**
Project Coordinator
Asbestos Training Center
Division of Continuing Education
University of Kansas
5005 West 95th St.
Shawnee Mission, KS 66207
(913) 648-5042

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**American Industrial Hygiene Association**
475 Wolf Ledges Pkwy.
Akron, OH 44311
(216) 762-7294
Provides advice on asbestos sampling methods and qualified laboratories.

**Association of Wall and Ceiling Industries (AWCI)**
25 K St., NE
Washington, DC 20002
(202) 783-2924
Contact person: Gene Erwin, Technical Director

AWCI offers training courses for local firms in asbestos removal and containment. AWCI will send on request the names of contractors in your state who have undergone its 2 1/2 day training course. It can also offer a list of industrial hygienists qualified to inspect for asbestos.

**Environmental Defense Fund**
1525 18th St., NW
(1616 P Street, NW after August 1, 1985)
Washington, DC 20036
(202) 387-3500

This group has written materials for community groups and school boards on the asbestos issue. The most recent is *A Citizen's Guide to the EPA Asbestos Program*. It will be sent on request.

**National Association of Asbestos Abatement Contractors**
932 Massachusetts
P.O. Box 477
Lawrence, KS 66044
(913) 749-4032
Can provide answers to common questions about asbestos abatement.

**White Lung Association**
1114 Cathedral St.
Baltimore, MD 21201
(301) 727-6029

**Workers Institute for Safety and Health (WISH)**
1126 16th St., NW
Washington, DC 20036
(202) 887-1980

**Congress**

The Honorable _____
U.S. House of Representatives
Washington, DC 20515

The Honorable _____
U.S. Senate
Washington, DC 20510

Your federal legislators may be a valuable resource to enlist in your behalf. Requests for help also should urge them to vote for increased federal funds for asbestos cleanup.